In the High Court of Judicature at Madras

Dated: 23.03.2006

Coram:

The Honourable Mr. Justice A.KULASEKARAN

Second Appeal No. 1369 of 1997
and C.M.P.No.13561 of 1999

Shankar ..Appellant (Plaintiff)

..vs..

1. S.Viswanathan
2. S.Ramani
3. Panneer Selvam ..Respondents (Defendant)

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 20.06.1997 made in A.S.No.255 of 1996 on the file of Principal District Judge, Nagapattinam, confirming the judgment and decree dated 26.07.1996 made in O.S.No.239 of 1990 on the file of District Munsif Court, Nannilam.

For Appellants : Mr.V.Ayyadurai

For Respondent : Mr.S.K.Raghunathan for R1 and R2

JUDGMENT

The plaintiff is the appellant, who lost the case before both the courts below. The plaintiff filed a suit in O.S.239 of 1990 for injunction and also for injunction restraining respondents 1 and 2 / defendants 1 and 2 from executing the decree passed in O.S.17 of 1988 by the District Munsif Court, Nannilam. The suit was dismissed and the plaintiff filed A.S.255 of 1996 before the Principal District Judge, Nagapattinam and the appeal was also dismissed. Hence, the second appeal.

2. The facts which are relevant for disposal of the Second Appeal are as follows:

Defendants 1 and 2 are owners of the land, which is the subject matter of the second appeal. Third defendant entered into an agreement for sale with defendants 1 and 2. He was put in

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possession of the suit properties. 3rd defendant failed to perform his part of the contract. Defendants 1 and 2 filed a suit in O.S.17 of 1988 before the District Munsif Court, Nannilam for recovery of possession, which was dismissed. Later, they filed A.S.127 of 1989 before the Sub Court, Nagapattinam, which was allowed. The third defendant did not file any appeal. Hence it reaches finality.

3. It is necessary to mention that A.S.127 of 1989 was allowed on 03.07.1990. The third defendant, after suffering the decree, executed a lease deed dated 22.08.1990 in favour of the plaintiff. The plaintiff filed necessary application before the Tahsildar to register him as a cultivating tenant without impleading defendants 1 and 2 and the same was ordered. Later, defendants 1 and 2 filed an appeal before the appellate authority, who has remanded it to the original authority. Thereafter, the plaintiff's name was registered as a cultivating tenant under Ex.A-2 dated 03.02.1996. It is also stated that defendants 1 and 2 filed an appeal against the order passed in Ex.A-2, which was dismissed.

4. Before the trial court, the plaintiff marked Ex.A-1 dated 10.09.1990, the order passed by the Tahsildar registering him as tenant originally. After remand, the same original authority, namely, the Tahsildar confirmed the earlier order and registered the plaintiff as cultivating tenant and it was marked as Ex.A-2. He also examined himself as P.W.1 and one Pandian as P.W.2. The defendants have marked Exs.B-1 to B-7, in which Exs.B-1 and B-2 dated 17.04.1989 are the judgment and decree in O.S.17 of 1988, dismissing the suit. Exs.B-3 and B-4 dated 03.07.1990 are the judgment and decree in A.S.127 of 1989 setting against the judgment and decree passed in O.S.17 of 1988 and ordering recovery of possession against the third defendant. Exs.B-5 to B-7 are the appeal preferred by defendants 1 and 2 against the order passed in Ex.A-2 dated 03.02.1996 and its acknowledgment receipts. The second defendant examined himself as D.W.1.

5. The trial court, after consideration of oral and documentary evidence, found that the decree for eviction against the third defendant was passed by a Civil Court in O.S.17 of 1988 on 03.07.1990 and thereafter, the third defendant has executed a lease deed dated 22.08.1990 i.e.after he suffered the decree and hence, the lease deed is not a valid one. It further held that the civil court is the competent forum to decide as to whether a person is a tenant or not. Hence, the order passed by the revenue officials holding that the plaintiff is a cultivating tenant is untenable in law. Section 16(3) of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act is not at all a bar to the civil court to decide the above said issue as to whether the person is a tenant or not. It is also further held by the trial court that the relief sought for by the plaintiff that the decree in O.S.No.17 of 1988 should not

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be executed is also untenable and accordingly dismissed the suit. The appeal preferred by the plaintiff before the appellate court was also dismissed on the very same ground followed by the trial court and after independent consideration of all the available materials.

6. The second appeal has not been admitted and it stands at the stage of notice of motion and it is now taken up for final disposal.

7. Heard the learned counsel for both parties. For convenience sake, the appellant is described as 'plaintiff' and the respondents are described as 'defendants'.

8. Learned counsel appearing for the plaintiff would submit that when the revenue authority is competent to decide the right of a cultivating tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, it is not open to the civil court to go into the merit of that order. The trial court as well as appellate court without considering the same, erroneously rejected the claim of the plaintiff and prayed that the second appeal may be allowed.

9. Mr.Raghunathan, learned counsel appearing for defendants 1 and 2 would submit that the suit in O.S.17 of 1988 was ultimately decreed on 03.07.1990 ordering eviction against the third defendant and the third defendant leased out the suit property on 22.08.1990 after suffering a decree to the plaintiff. Hence, the said lease in favour of the plaintiff is not valid in the eye of law. Though defendants 1 and 2 challenged the proceedings of Tahsildar, who recorded the plaintiff as cultivating tenant, by various proceedings, still the civil court is the only authority to decide as to whether a person is a tenant or not.

10. Admittedly, in this case, the third defendant after suffering the decree leased out the property to the plaintiff. In this case, we have to decide whether the lease in favour of the plaintiff by the third respondent is valid or not.

11. It is unnecessary to discuss other facts since it is an admitted one that eviction decree was ordered on 03.07.1990. Thereafter, the suit property was leased out to the plaintiff by the third respondent on 22.08.1990. Hence, the same is not valid in the eye of law. Now the contention of the plaintiff is that as per the lease granted by the third defendant, the plaintiff has been cultivating the said land. The revenue authorities also in exercise of power under Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, registered his name. Hence, it is not open to the civil court to interfere. When once the lease is non-est in the eye of law, any registration made by the revenue officials in exercise of power conferred under the said Act, is also non est in law. In view

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of the same, this Court is of the considered view that the concurrent findings of the courts below rejecting the claim of the plaintiff are based on valid evidence. This Court finds no reason to interfere with the concurrent findings of fact rendered by the courts below, which is based on valid and acceptable eviction. Besides, there is no substantial question involved in this case.

12. For the reasons stated above, the second appeal fails and is dismissed. No costs. Consequently, connected C.M.P.is closed.

23.03.2006

gl

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

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Nagapattinam.

2) The District Munsif,
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jrg (co)

dv/5.4.06

Second Appeal No.1369 of 1997

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